



APPEAL PANEL DECISION FORM

I. CLAIMANT AND CLAIM INFORMATION

Claimant Name	Last/Name of Business	First	Middle
	[REDACTED]		
Claimant ID	[REDACTED]	Claim ID	[REDACTED]
Claim Type	Business Economic Loss		
Law Firm	[REDACTED]		

II. DECISION

Select the Compensation Amount set forth in either BP's Final Proposal or the Claimant's Final Proposal as the final outcome on the claim and check the appropriate box to signify your decision.

<input type="checkbox"/> BP's Final Proposal	Compensation Amount	\$0
	Risk Transfer Premium	.25
	Prior Payment Offset	\$0
<input checked="" type="checkbox"/> Claimant's Final Proposal	Compensation Amount	\$63,247.66
	Risk Transfer Premium	.25
	Prior Payment Offset	\$0

III. PRIMARY BASIS FOR PANELIST DECISION

Please select the primary basis for your decision. You may also write a comment describing the basis for your decision.

- Error in documentation review.**
- Error in calculation.**
- Error in RTP multiplier.**
- Error in Prior Spill-Related Payment Amount.**
- No error.**

Comment (optional):

See Decision Comment uploaded.

[REDACTED]

BP appeals the BEL award to the claimant it describes as “a retailer of rubber products located in [REDACTED] MS,” asserting that the Settlement Program made three errors in issuing this award. *First*, the Settlement Program failed to conduct the requisite analysis to determine whether Claimant is a business engaged in the oil and gas industry excluded from the class. *Second*, the Settlement Program failed to evaluate whether Claimant suffered any moratoria-related losses, which are not compensable under the Settlement Agreement. *Third*, the Settlement Program failed to investigate certain related-party relationships, and to consider how these relationships affect the calculation of this award.

The third alleged error is not eligible for consideration on the merits because BP’s Notice of Appeal omitted any reference to such an issue. Specifically, its Notice of Appeal asserted “Calculation Error” as the basis for the appeal, and then went on to explain:

As the basis for the appeal, BP states that the award does not comply with the terms of the Settlement Agreement, including without limitation the BEL framework. The Settlement Program did not perform a proper evaluation of whether claimant is excluded from the class according to Exhibits 17 and or whether claimant is an excluded defense contractor/subcontractor. Further, BP states that the Settlement Program did not perform a proper evaluation of whether any claimed losses were due to the federal moratoria.

Rule 9 of the “Rules Governing the Appeals Process” mandates that “[t]he original appellant shall be limited to the issues raised in its Notice of Appeal, except as necessary to respond to new issues raised by the appellee in its Initial Proposal.”

As to the first assignment of error, BP contends that “evidence” from Claimant’s website indicates that it “sells construction and mining machinery and equipment to oil and gas companies,” and faults the Settlement Program for not conducting an analysis of Claimant’s business character. All BP offers as the website evidence are references to the fact that Claimant’s customers “include” those involved in the oil and gas industry. As BP notes, however, the website touts Claimant’s provision of products and services to “a wide range of petro-chemical plants, pulp and paper mills, contractors, shipyards, mining and forestry operations, military bases and municipalities.” BP argues that Claimant fits within a couple of the categories of excluded oil and gas businesses included within the list of excluded companies in § 2.2.4.5 of the Settlement Agreement, to-wit: “merchant wholesaling of construction and mining (except oil well) machinery and equipment; wholesale distribution of oil well machinery, equipment and supplies.”

Not only does BP consistently describe Claimant as a “retailer,” Claimant’s income tax returns from 2006 to 2011 describe its “Business Activity” as “Retail Sales.” BP does not explain why a company engaged in retail sales should be considered a “merchant wholesaling” certain items or one engaged in “wholesale distribution” of certain items.

As to BP's second charged error by the Program, it acknowledges that the NAICS code assigned Claimant is not one of those listed in either Exhibit 17 or 19 of the Settlement Agreement as warranting automatic review for Moratoria Losses, but argues that those listings are not exhaustive, and, moreover, that other NAICS codes would have been more appropriate. One of them relates only to "wholesalers" and the other to companies engaged in "repair and maintenance." To the extent Claimant's services include those elements, no showing is made by BP of the extent of the same within Claimant's overall business profile. Claimant counters that its business of retail sales of rubber products is best classified under NAICS code 453990, a code not included among those requiring automatic review. The Settlement Program assigned Claimant the NAICS code of 453998, also not included.

BP has failed to show error by the Program and its Final Proposal of "\$0" forces selection of Claimant's Final Proposal. Appeal denied.